

Montana Clean Indoor Air Act: Administrative Rules

37.113.101 DEFINITIONS

In addition to those terms defined in [50-40-103](#), MCA, the following terms, as used in Title 50, chapter 40, part 1, MCA, have the meaning set forth below:

- (1) "Designee" means, for purposes of determining who is designated by the department to act on its behalf in enforcement of the Montana Clean Indoor Air Act of 1979, is any entity with which the department has entered into an agreement outlining mutual responsibilities.
- (2) "Enclosed room", for purposes of the definition of "place of work" in [50-40-103](#), MCA, means an area with a wall on all sides reaching from floor to ceiling, exclusive of windows and doors, and does not include an area completely or partially open to the outside air such as a roofed shelter.
- (3) "Private residence" means the personal living quarters of an individual, regardless of the legal status of the property, such as incorporation of a ranch, unless the residence is part of a structure, such as a health care facility, where smoking is specifically prohibited by Title 50, chapter 40, part 1, MCA. (History: [50-40-110](#), MCA; *IMP*, [50-40-103](#), [50-40-104](#), MCA; *NEW*, 2005 MAR p. 2079, Eff. 10/28/05.)

37.113.104 BARS, CERTIFICATION OF QUALIFICATION FOR EXCEPTION

- (1) An establishment, as defined in [50-40-103](#), MCA, may apply to the department for a certificate indicating that the department has determined that it is a bar qualifying for the exception from the provisions of Title 50, chapter 40, part 1, MCA, as provided in [50-40-104](#) (5), MCA.
- (2) An application for certification may be obtained from the Department of Public Health and Human Services, Montana Tobacco Use Prevention Section, P.O. Box 202951, Helena, MT 59620-2951.
- (3) A completed application must be submitted to the department at the address cited in (2). The signature and documentation required by the application will be verified by the department or its designee.
- (4) If the department or its designee determines, at the time of application or after a certificate has been granted, that the establishment does not qualify for the exception allowed by [50-40-104](#) (5), MCA, written notice of that decision and the factual basis for the decision will be sent to the individual who submitted the application.
- (5) By November 30 and May 31 of each year, the department will mail to the local board of health of each county a list of the bars in that county that have a current certificate of exception.
- (6) Each bar that qualifies for an exception from the provisions of Title 50, chapter 40, part 1, MCA, must post, at the entrance to the bar, an easily readable sign that minors are not allowed in the areas where smoking is allowed. (History: [50-40-110](#), MCA; *IMP*, [50-40-104](#), [50-40-108](#), MCA; *NEW*, 2005 MAR p. 2079, Eff. 10/28/05.)

37.113.108 INSPECTIONS AND ENFORCEMENT

- (1) The department, a local health board and their respective designees may conduct inspections of:
 - (a) enclosed public places to determine if any violation of the Montana Clean Indoor Air Act, Title 50, chapter 40, parts 1 and 2, MCA has occurred; and
 - (b) public school property to determine compliance with [20-1-220](#), MCA, relating to smoking on public school property.
- (2) For every inspection conducted, a written inspection report must be made and retained by the agency conducting the inspection.
- (3) An establishment that serves food but purports to qualify as a bar within the definition contained in [50-40-103](#) (5), MCA must upon request submit to the department, a local health board, or the designee of either, the documentation necessary to prove that at least 60% of the establishment's annual gross income comes from the sale of alcoholic beverages, gambling receipts, or both.

(4) Any violation of the Montana Clean Indoor Air Act or of [20-1-220](#) , MCA must be reported to the local health board or its designee and the county attorney of the county in which the violation occurred.

(History: [50-40-110](#), MCA; [IMP](#), [20-1-220](#), [50-40-104](#), [50-40-108](#), MCA; [NEW](#), 2005 MAR p. 2079, Eff. 10/28/05.)

37.113.112 COMPLAINT PROCEDURE REGARDING SMOKING VIOLATIONS

(1) An individual who believes that a violation of the Montana Clean Indoor Air Act or of [20-1-220](#) , MCA has occurred may file a written complaint with the department or the local health board or its designee that describes the violation, provides the date of the violation and is signed by the complaining party.

(2) If a complaint is filed with the local health board, a copy of the complaint must be forwarded within five working days after the end of the month in which it was received to the Department of Public Health and Human Services, Montana Tobacco Use Prevention Section, P.O. Box 202951, Helena, MT 59620-2951.

(3) If a complaint is filed initially with the department or a designee of the department, a copy will be forwarded within five working days to the local health board of the county in which the violation allegedly occurred.

(4) Once a complaint is filed, the department or a designee of the department, which may include the local health department, will conduct an investigation to determine if a violation occurred.

(5) If the department or its designee, after an investigation, determines that a violation did occur, it will document the violation and file the documentation and the determination of the department or its designee with the office of the county attorney in the county where the violation occurred.

(History: [50-40-110](#), MCA; [IMP](#), [20-1-220](#), [50-40-104](#), [50-40-108](#), MCA; [NEW](#), 2005 MAR p. 2079, Eff. 10/28/05.)

Montana Clean Indoor Air Act Law

50-40-101. Short title.

This part may be cited as the "Montana Clean Indoor Air Act of 1979".

50-40-102. Intent -- purpose.

The legislature finds and declares that the purposes of this part are as follows:

- (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment;
- (2) to recognize the right of nonsmokers to breathe smoke-free air; and
- (3) to recognize that the need to breathe smoke-free air has priority over the desire to smoke.

50-40-103. Definitions.

As used in this part, the following definitions apply:

- (1) "Bar" means an establishment with a license issued pursuant to Title 16, chapter 4, that is devoted to serving alcoholic beverages for consumption by guests or patrons on the premises and in which the serving of food is only incidental to the service of alcoholic beverages or gambling operations, including but not limited to taverns, night clubs, cocktail lounges, and casinos.
- (2) "Department" means the department of public health and human services provided for in [2-15-2201](#).
- (3) "Enclosed public place" means an indoor area, room, or vehicle that the general public is allowed to enter or that serves as a place of work, including but not limited to the following:
 - (a) restaurants;
 - (b) stores;
 - (c) public and private office buildings and offices, including all office buildings and offices of political subdivisions, as provided for in [50-40-201](#), and state government;
 - (d) trains, buses, and other forms of public transportation;
 - (e) health care facilities;
 - (f) auditoriums, arenas, and assembly facilities;
 - (g) meeting rooms open to the public;
 - (h) bars;
 - (i) community college facilities;
 - (j) facilities of the Montana university system; and
 - (k) public schools, as provided for in [20-1-220](#) and [50-40-104](#).
- (4) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.
- (5) "Incidental to the service of alcoholic beverages or gambling operations" means that at least 60% of the business's annual gross income comes from the sale of alcoholic beverages or gambling receipts, or both.
- (6) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.
- (7) "Place of work" means an enclosed room where one or more individuals work.
- (8) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product.

50-40-104. Smoking in enclosed public places prohibited -- notice to public -- places where prohibition inapplicable.

- (1) Except as otherwise provided in this section, smoking in an enclosed public place is prohibited.
- (2) The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, that smoking in the enclosed public place is prohibited.
- (3) The proprietor or manager of an intrastate bus that is not chartered shall prohibit smoking in all

parts of the bus.

(4) The proprietor or manager of a business licensed under [23-5-611](#)(1)(a) or (1)(c) may not allow any member of the public who is under 18 years of age to be present in any area of the establishment in which smoking is permitted.

(5) The prohibition in subsection (1) does not apply to the following places, whether or not the public is allowed access to those places:

- (a) until September 30, 2009, bars, provided that smoke from the bar does not infiltrate into areas where smoking is prohibited under this section;
- (b) a private residence, unless it is used for any of the following purposes, in which case the prohibition in subsection (1) applies:
 - (i) a family day-care home or group day-care home, as defined in [52-2-703](#) and licensed pursuant to Title 52, chapter 2, part 7;
 - (ii) an adult foster care home, as defined in [50-5-101](#) and licensed pursuant to Title 50, chapter 5; or
 - (iii) a health care facility, as defined in [50-5-101](#) and licensed pursuant to Title 50, chapter 5;
- (c) a private motor vehicle;
- (d) school property in which smoking is allowed pursuant to the exception in [20-1-220](#);
- (e) a hotel or motel room designated as a smoking room and rented to a guest; however, not more than 35% of the rooms available to rent to guests may be designated as smoking rooms; and
- (f) a site that is being used in connection with the practice of cultural activities by American Indians that is in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a.

50-40-108. Enforcement.

The provisions of this part must be supervised and enforced by the department and the department's designees, local boards of health, and the boards' designees under the direction of the department.

50-40-110. Rulemaking required.

The department shall adopt rules to implement this part.

50-40-115. Penalties.

(1) It is unlawful for a person to smoke in any area where smoking is prohibited under [20-1-220](#) or [50-40-104](#). A person who violates [20-1-220](#) or [50-40-104](#) is guilty of a misdemeanor and shall be subject to a fine of not less than \$25 or more than \$100.

(2) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of Title 50, chapter 40, is guilty of a misdemeanor after a third violation within a 3-year period and shall be warned, reprimanded, or punished as follows:

- (a) a warning for the first violation;
- (b) a written reprimand for a second violation; and
- (c) within any 3-year period, a fine of:
 - (i) \$100 for a third violation;
 - (ii) \$200 for a fourth violation; and
 - (iii) \$500 for a fifth or subsequent violation.

(3) Penalties imposed under this section may not be considered by the department of revenue for the purposes of [16-4-401](#) or by the department of justice for the purposes of [23-5-119](#), [23-5-177](#), or [23-5-611](#)(1)(a) or (1)(c).

50-40-201. Local government buildings -- smoking prohibited. (1) In all parts of buildings maintained by a political subdivision, smoking is prohibited as provided in this section.

(2) Buildings owned and occupied by a political subdivision only must be smoke-free on January 1, 2006. Buildings leased and occupied by a political subdivision only must be smoke-free as soon as practicable on or after January 1, 2006, but no later than July 1, 2006. In a building leased and

occupied by a political subdivision and another entity, the on-the-scene manager of the political subdivision activity located in the building shall make the portions of the building occupied by the political subdivision activity smoke-free as soon as practicable after January 1, 2006, but no later than July 1, 2006, and is encouraged to work with the building owner or other tenants to make the building smoke-free.

(3) Restrictions contained in this section and imposed by the governing body apply uniformly to the employees of the political subdivision and the public.

20-1-220. Use of tobacco product in public school building or on public school property prohibited.

(1) An individual may not use a tobacco product in a public school building or on public school property.

(2) Subsection (1) does not apply to the use of a tobacco product in a classroom or on other school property as part of a lecture, demonstration, or educational forum sanctioned by a school administrator or faculty member concerning the risks associated with use of a tobacco product.

(3) The principal of an elementary or secondary school, or the principal's designee, may enforce this section.

(4) A violation of this section is subject to the penalties provided in [50-40-115](#).

(5) For the purposes of this section, the following definitions apply:

(a) "Public school building" or "public school property":

(i) means public land, fixtures, buildings, or other property owned or occupied by an institution for the teaching of minor children that is established and maintained under the laws of the state of Montana at public expense; and

(ii) includes school playgrounds, school steps, parking lots, administration buildings, athletic facilities, gymnasiums, locker rooms, and school buses.

(b) "Tobacco product" means a substance intended for human consumption that contains tobacco, including cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco.